UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/63/Add.5
5 May 1997

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1990

Addendum

CONGO 1/

[9 July 1996]

1/ For the initial report submitted by the Government of Congo, see document CCPR/C/3/Add.2; for its consideration by the Committee, see CCPR/C/SR.732 and SR.736 and Official Records of the General Assembly, Forty-second session, Supplement No. 40 (A/42/40), paras. 224-255.

GE.97-16404 (E)

CONTENTS

	Paragraphs	Page
Introduction	1 - 3	3
I. INFORMATION IN RELATION TO ARTICLES 1-27 OF THE COVENANT	4 - 79	3
Article 1	4 - 9	3
Article 2	10 - 12	5
Article 3	13	6
Article 4	14 - 15	7
Article 6	16 - 19	7
Article 7	20 - 21	9
Article 8	22 - 23	9
Article 9	24 - 28	10
Article 10	29 - 34	16
Article 11	35	18
Article 12	36 - 39	20
Article 13	40 - 41	21
Article 14	42 - 57	21
Article 15	58	27
Articles 16 and 17	59	28
Article 18	60	28
Article 19	61	28
Article 20	62 - 64	29
Articles 21 and 22	65	30
Article 23	66	30
Article 24	67 - 71	32
Article 25	72	33
Article 26	73	34
Article 27	74 - 79	34

Introduction

1. This is the second periodic report submitted by the Government of the Republic of the Congo under article 40, paragraph 1, of the International Covenant on Civil and Political Rights. It supplements and updates the initial report, which was submitted on 12 February 1986 (CCPR/C/36/Add.2). It was drawn up pursuant to the Human Rights Committee's guidelines requiring States parties to treaties to report on measures taken to give effect to the rights recognized in the Covenant and on progress made in the exercise of those rights.

2. In this regard, mention must be made of two major changes in Congolese institutional law:

(a) The adoption of a new Constitution, the preamble whereof refers repeatedly to the 1948 Universal Declaration of Human Rights, the 1981 African Charter on Human and Peoples' Rights and the other international human rights instruments duly ratified by the Congo. The Constitution also embodies fundamental new national legislation, namely the Charter of National Unity and the Charter of Rights and Liberties, each adopted by the Sovereign National Conference at Brazzaville on 29 May 1991;

(b) The changes made in the law on criminal procedure and in the judicial system in order to bring judicial practice into line with the standards laid down in the International Covenant on Civil and Political Rights.

3. The core document constituting the first part of the reports by States parties to international human rights instruments (HRI/CORE/1/Add.79) contains a general description of the Republic of the Congo, together with information on the structure of the State and the executive, legislature and judiciary.

I. INFORMATION IN RELATION TO ARTICLES 1-27 OF THE COVENANT

Part I of the Covenant: The right of self-determination

Article 1

Paragraph 1

4. The right of self-determination is enshrined in the sixth to eighth subparagraphs of the preamble to the Constitution of 15 March 1992:

Subparagraph 6

"Promote rational exploitation of our riches and our natural resources";

Subparagraph 7

"Exercise self-determination and [...] reaffirm our independence";

Subparagraph 8

"Cooperate, on the basis of the principles of equality, reciprocal interest and mutual respect, sovereignty and territorial integrity, with all peoples who share our ideals of peace, liberty, justice and human solidarity."

5. The provisions of the Covenant in question are given effect by two articles of the Constitution of 15 March 1992, article 1, which provides that the Republic of the Congo "is a sovereign and independent, decentralized, indivisible, secular, democratic, and social State", and article 4, which states that "national sovereignty shall belong to the people, who shall exercise it by means of referendum and through representatives elected by universal suffrage".

Paragraph 2

6. With regard to article 1, paragraph 2 of the Covenant, the Constitution of the Congo provides, in its preamble, that the Congolese people has the rights of self-determination, reaffirmation of its independence and cooperation, on the basis of the principles of equality, reciprocal interest and mutual respect, sovereignty and territorial integrity, with all peoples who share its ideals of peace, liberty, justice and human solidarity.

7. Articles 32 and 35 of the Constitution provide as follows:

Article 32

"Everyone shall have the right to engage, subject to observance of the relevant laws and regulations, in activity in the economic sectors of their choice.";

Article 35

"Citizens shall have the right to culture and to the respect of their cultural identity. All the communities comprising the Congolese Nation shall be free to use their languages and their own cultures without prejudicing those of others. It shall be incumbent on the State to safeguard and promote the national material and spiritual values of civilization, as well as cultural traditions."

8. Article 1 of the Covenant concerns self-determination and that principle is also stated in the Congolese Constitution, in the ninth subparagraph of the preamble: "exercise self-determination and [...] reaffirm our independence".

Paragraph 3

9. The Government of the Congo has consistently striven for the observance of the right of peoples to self-determination and has always

refrained from any interference in the domestic affairs of other States. That policy is expressed in the tenth and eleventh subparagraphs of the Constitution:

Subparagraph 10

"Cooperate, on the basis of the principles of equality, reciprocal interest and mutual respect, sovereignty, and territorial integrity, with all peoples who share our ideals of peace, liberty, justice and human solidarity";

Subparagraph 11

"Contribute to world peace as a member of the United Nations and the Organization for African Unity."

Part II of the Covenant

Article 2

Paragraphs 1 and 2

10. The principle set forth in article 2, paragraphs 1 and 2, of the Covenant is enshrined in article 52 of the Congolese Constitution, which provides that:

"Aliens shall have on the territory of the Republic of the Congo, and subject to current law and regulations, the same rights and freedoms as Congolese citizens, except those enumerated in articles 5, 6, 7 and 25 of the present Constitution. Notwithstanding, they shall have the right to form and belong to apolitical associations."

11. Articles 5, 6, 7 and 25 of the Constitution provide as follows:

Article 5

"Suffrage shall be universal, equal, secret, free and genuine. Subject to the conditions set by law and to the provisions of articles 68 and 93 of the present Constitution, all Congolese nationals, whichever their sex, who have attained 18 years of age and are in possession of their civil and political rights shall be entitled to elect and to be elected";

Article 6

"All citizens shall have the right to participate, either directly or through representatives, in the government of the country";

Article 7

"It shall be open to political associations, parties and groups to participate in the expression of suffrage. They may be formed freely and shall exercise their activities in accordance with the law and the principles of national sovereignty, territorial integrity, national unity and pluralist democracy";

Article 25

"All citizens shall have the right to create and belong to parties, trade unions or associations."

Paragraph 3

12. With regard to the guarantees concerning remedies referred to in article 2, paragraph 3, of the Covenant, the Constitution recognizes to every individual the right to bring proceedings in a court of major instance. Should the verdict not satisfy the plaintiff, he may appeal it to the Court of Appeal. Should he feel that body's judgment to be prejudicial to himself, he may apply for its review to the Supreme Court. All these remedies are recognized in articles 18 and 19 of the Constitution, which provide as follows:

Article 18

"All citizens shall have the right to petition the competent State organs";

Article 19

"Any citizen who is injured by an official act shall have the right to judicial recourse."

Article 3

Equal rights of men and women

13. Article 11 of the Constitution provides that:

"The State shall safeguard the equality before the law of all citizens, without distinction as to origin, social or material status, racial, ethnic or regional origin, sex, education, language, attitude vis-à-vis religion or philosophy, or place of residence. It shall respect all rights and freedoms within limits compatible with public order and morals.

It shall be incumbent on the State to ensure the elimination of all forms of discrimination against women and the protection of their rights in all spheres of private and public life mentioned in the international declarations and conventions ratified by the Congo."

Women have the same rights as men in private, political and social life. Women are entitled to the same wages as men for equal work. They have the same rights with respect to social security.

Article 4

Paragraph 1

14. Article 4 of the International Covenant on Civil and Political Rights provides that in time of officially proclaimed public emergency States parties may derogate from their obligations when the situation so demands. The Congo, on which events have imposed such periods of restriction, has provided for such situations in article 109 of its Constitution:

Article 109

"In the event either of imminent danger resulting from serious infringements of public order or of occurrences of the nature and gravity of public calamities or national disasters, the President of the Republic may, at a meeting of the Council of Ministers, decree a state of emergency over all or part of the national territory.

In the event of imminent danger resulting either from a clear foreign threat, from armed insurrection or from serious incidents during a state of emergency, the President of the Republic may, at a meeting of the Council of Ministers, declare a state of siege.

In each case, the Parliament shall, if it is not in session, automatically convene in order to assess the legality of the decision of the President of the Republic.

Parliament shall have sole competence to extend states of emergency or siege beyond two weeks.

The procedure for the application of the present article shall be determined by law."

Paragraph 2

15. Articles 6, 7, 8, 11, 15, 16 and 18 of the Covenant concern respectively the right to life, the rights not to be subjected to torture, held in slavery or imprisoned for failure to fulfil a contractual obligation, and the rights to equality before the law and to freedom of thought and conscience. Those rights are enshrined in the Congolese Constitution and there can be no derogation from them even in duly declared exceptional circumstances.

Part III of the Covenant

Article 6

Paragraphs 1 and 2

16. Respect for the human person is enshrined in article 10 of the Constitution, which provides that:

"The human person is sacred and has the right to life.

The State shall have an absolute obligation to respect and protect the human person. Every citizen shall have the right to the free development and full flowering of his personality in its psychological, intellectual, spiritual, material and social dimensions, subject to respect for the rights of others, public order and morals."

17. The death penalty is still in force in the Republic of the Congo; it may only be imposed for the most serious crimes such as voluntary homicide. It is only carried out pursuant to a final judgement by a competent court.

18. The law previously treated crimes of opinion and voluntary homicide in the same way, but the Constitution of 15 March 1992 prohibits the imposition of the death penalty for the expression of opinions in the forms covered in its articles 26 and 27, which provide as follows:

Article 26

"Freedom of belief and conscience and the freedom to profess religious or philosophical beliefs shall be inviolable.

Freedom of worship shall be guaranteed within the limits compatible with public order and morals.

No one shall be relieved on grounds of religious opinion from fulfilling a civic duty."

Article 27

"All citizens shall have the right freely to express and disseminate their opinions by speech, writing or image.

Freedom of the press and freedom of information shall be guaranteed.

Censorship shall be prohibited.

Access to sources of information shall be unimpeded.

All citizens shall have the right to information and communication. Subject to compliance with the law, the exercise of activities relating to these domains shall be free from all outside control."

Paragraph 4

19. Anyone sentenced to death has the right to petition for clemency. Article 85 of the Constitution provides that "the President of the Republic shall have the prerogative of mercy". Decree No. 83/199 of 26 March 1983, which defines the procedure and the legal rules applicable to the right of mercy, states in article 2 that clemency is the prerogative of the President of the Republic, the head of the State, and that the President alone can

decide when it should be exercised. Article 3, subparagraph 3, of the Decree provides that, in cases where a death sentence has become final, the convicted person may not be executed unless the President has refused to grant a pardon.

Article 7

Torture

20. Unlike the 1984 Constitution, the Constitution of 15 March 1992 provides, in its article 16, that:

> "All acts of torture and all cruel, inhuman, or degrading treatment shall be prohibited. Anyone found guilty of the acts mentioned in the present article shall be punished according to the law."

This constitutional change should enable the Congo to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

21. Any instrument whereby someone alienates all or part of their body shall, if it is intended to be executable before the alienator's death and would seriously affect the integrity of his/her body, be invalid. Even when they are medically justified, instruments of this nature may not be executed without the approval of the alienator's relatives.

Article 8

Slavery

22. Article 31, subparagraph 3, of the Constitution prohibits all forms of slavery:

> "Except for law enforcement officers, Congolese citizens shall have freedom of association and the right to strike. No one may be required to perform forced labour otherwise than in the case of a custodial penalty imposed by a court. No one may be enslaved."

23. Article 44 of the Constitution prohibits the employment of persons under 18 years of age in work endangering their morals or health:

Article 44

> "The employment of persons under 18 years of age in work of such a nature as to endanger their morals, health or lives or to hinder their normal development shall be punishable by law."

Article 9

Liberty and security of person

Paragraph 1

24. The Constitution contains in Title II (arts. 12, 13, 14, 22, 26, 27 and 29) a whole panoply of relevant rules:

Article 12

"The liberty of the human person shall be inviolable. No one may be accused, arrested or detained other than in the cases defined and the manners prescribed by law. All accused persons shall be presumed innocent until their guilt has been established through proceedings in which their rights as defendants are protected";

Article 13

"No one may be incarcerated except in the cases provided for by law.";

Article 14

"Subject to the provisions of the present Constitution, and with a view to scrupulous respect for the human person, all courts of special jurisdiction shall be prohibited.";

Article 22

"All citizens shall have freedom of movement on the national territory.

Road blocks may only be established on conditions defined by law.

All citizens shall have freedom of residence. They shall have the right freely to leave the national territory unless they are the subject of judicial proceedings, and to return thereto.";

Article 26

"Freedom of belief and conscience and the freedom to profess religious or philosophical beliefs shall be inviolable.

Freedom of worship shall be guaranteed within the limits compatible with public order and morals.

No one shall be relieved on grounds of religious opinion from fulfilling a civic duty."

Article 27

"All citizens shall have the right freely to express and disseminate their opinions by speech, writing or image.

Freedom of the press and freedom of information shall be guaranteed.

Censorship shall be prohibited.

Access to sources of information shall be unimpeded.

All citizens shall have the right to information and communication. Subject to compliance with the law, the exercise of activities relating to these domains shall be free from all outside control.";

Article 29

"All citizens shall have the right to assemble peacefully without previous authorization or declaration.

Peaceful assemblies and demonstrations in public places shall be subject to regulation.

Freedom to process shall be guaranteed. The conditions of exercise of this freedom shall be defined by law."

Paragraphs 2 and 3

25. Articles 105, 107, 108, 115, 117, 119-122 and 125 of the Code of Criminal Procedure provide as follows:

Article 105

"1. Every warrant must specify the identity of the person to whom it refers, be dated and signed by the judicial officer who issued it, and bear his seal.

2. Warrants of commitment and warrants of arrest must in addition specify the nature of the charge and the applicable articles of the law.

3. A summons must be served on the person to whom it refers.

4. A warrant of arrest must be served and enforced by a criminal police officer or by a law-enforcement official, who must exhibit it to the accused or witness and give him a copy.

5. If the individual concerned is already under arrest on other grounds, the warrant must be served on him as stated in the previous paragraph or, on the instructions of the public prosecutor, by the superintendent of the public gaol, who shall likewise give the individual a copy.

6. In an emergency, a warrant of arrest may be served by any means.

7. In that event, particulars must be given of the essential indications on the original, especially the identity of the person concerned, the nature of the charge and the name and capacity of the judicial officer issuing the warrant.

8. A warrant of commitment must be served on the accused by the examining magistrate; a reference to such service shall be included in the record of the examination proceedings.";

Article 107

"1. The examining magistrate shall immediately examine an accused person who has received a summons.

2. The procedure shall be the same for the examination of an accused person or the hearing of a witness taken into custody by virtue of a warrant of arrest; however, if the examination cannot take place immediately, the accused shall be taken to the public gaol, where he may not be held for longer than 72 hours.

3. On the expiry of that period, he shall, as a matter of course, be brought by the prison superintendent before the public prosecutor or, failing him, the president of the court or a judge designated by him to proceed immediately with the examination, failing which the accused must be released.";

Article 108

"1. Anyone taken into custody by virtue of a warrant of arrest who has been held for over 72 hours in the public gaol without a hearing shall be deemed to be arbitrarily detained.

2. Any judge or official who orders or knowingly tolerates such arbitrary detention shall be liable to the penalties specified in articles 119 and 120 of the Penal Code.";

Article 115

"1. Save for the case specified in article 57, the accused must be examined within 72 hours of his imprisonment, failing which the provisions of articles 107 (3) and 108 relating to arbitrary detention shall apply.

2. If the accused is arrested outside the area of jurisdiction of the examining magistrate who issued the warrant, he shall immediately be brought before the public prosecutor of the place of arrest or before the divisional judge or judge of minor jurisdiction exercising his powers, who shall take the statements of the accused and draw up a record thereof.

3. The public prosecutor shall immediately inform the judge who issued the warrant, who shall proceed as stated in article 111.";

Article 117

"1. The examining magistrate may only issue a warrant of commitment if the examination has been carried out and the offence carries a penalty of correctional imprisonment or a heavier penalty.

2. The official entrusted with carrying out the warrant of commitment shall hand over the accused to the superintendent of the public gaol, who shall give that official a written acknowledgment thereof.";

Article 119

"Preventive detention constitutes an exceptional measure. When it is ordered, the rules set forth below must be observed.";

Article 120

"In correctional matters, when the maximum penalty specified by law is less than one year's imprisonment, an accused who is resident in the Congo may not be detained for more than two weeks after his first appearance before the examining magistrate unless he has previously been sentenced either for a crime or to more than three months' imprisonment without stay of execution for an ordinary offence.";

Article 122

"1. In cases other than those provided for in the preceding article, preventive detention may not exceed four months.

2. If continued detention appears necessary, the examining magistrate may extend the detention by an order accompanied by a specific statement of grounds based on the evidence in the case and issued in response to a substantiated application by the public prosecutor.

3. No extension may be for a period of more than two months.";

Article 122

"1. Whenever it is not automatic, release pending trial may be ordered as a matter of course by the examining magistrate following consultation with the public prosecutor, provided that the accused

undertakes to reappear for all stages of the proceedings as soon as he is required to do so and provided that he keeps the examining magistrate informed of all his movements.

2. The public prosecutor may also apply for release pending trial at any time. The examining magistrate shall render a decision within five days from the date of such application.";

Article 125

"1. When, pursuant to the preceding article, an accused or defendant is released or allowed to remain at liberty pending trial subject to a restricted residence order, the prefect and police or gendarmerie authorities with territorial jurisdiction shall immediately be notified of the decision defining his place of residence.

2. A defendant subject to a restricted residence order shall be required to report periodically to the police superintendent or police officer, or failing this to the commander of the gendarmerie brigade, of his place of residence.

3. The police or gendarmerie authorities shall note down in a register the name of the person concerned and the date of his appearance.

4. Unless the court issuing the restricted residence order decides otherwise, the defendant shall be required to report to the police or gendarmerie authorities twice a month, on the dates fixed by those authorities.

5. Permits by the competent court granting temporary authorization to leave the place of restricted residence shall mention the individual's destination and the length of time for which he will be absent. The police or gendarmerie services responsible for exercising supervision shall be notified thereof.

6. Any decision to terminate the period of restricted residence must immediately be brought to the notice of the authorities referred to in paragraph 1 of the present article."

Paragraph 4

26. The rights guaranteed in article 9, paragraph 4, of the Covenant are embodied in the Constitution by means of articles 18, 19 and 20:

Article 18

"All citizens shall have the right to petition the competent State organs";

Article 19

"Any citizen who is injured by an official act shall have the right to judicial recourse";

Article 20

"All citizens shall have the right to recognition everywhere as persons before the law."

27. The provisions of paragraph 4 are also guaranteed by articles 48, 49, 107 and 108 of Act No. 1-63 of 13 January 1963 embodying the Code of Criminal Procedure, which provide as follows:

Article 48

"1. Where, in urban districts with a court of first instance, there exists serious and concordant evidence against a person such as to justify his being charged, the criminal police must bring him before the public prosecutor after not more than 72 hours in custody.

2. The time limit laid down in the preceding paragraph may be extended by 48 hours through written authorization of the public prosecutor or duly informed examining magistrate.

3. In places containing divisions of courts of first instance and courts of minor jurisdiction, extension of the time limits prescribed above shall be granted according to the individual case by the divisional judge or the judge of minor jurisdiction.";

Article 49

"1. Outside urban districts containing a court of first instance, a court of minor jurisdiction or a divisional court, the time limits provided for in the preceding article shall be doubled.

2. Criminal police officers operating at places other than court headquarters shall transmit to the public prosecutor or to the judicial officer with territorial jurisdiction the records of the initial proceedings and a statement of the facts justifying the request for an extension of the time limit.

3. Following the expiry of the time limits laid down in the above paragraphs, there may be no further examination of persons being held in custody, even if they cannot immediately be brought before the public prosecutor or the examining magistrate for reasons of force majeure, in particular a lack of transport.";

Article 107

"1. The examining magistrate shall immediately examine accused persons who have been summoned to appear.

2. A similar procedure shall apply to the examination of an accused person or the hearing of a witness detained under a warrant of arrest; however, if the accused cannot be examined immediately, he shall be taken to the public gaol, where he may not be detained for more than 72 hours.

3. Following the expiry of this time limit, he shall automatically be conveyed by the prison superintendent to the public prosecutor, who shall request the examining magistrate or, in his absence, the president of the court or a judge designated by the said president to proceed immediately with the examination, failing which the accused shall be released.";

Article 108

"1. Anyone taken into custody by virtue of a warrant of arrest who has been held for over 72 hours in the public gaol without a hearing shall be deemed to be arbitrarily detained.

2. Any judge or official who orders or knowing tolerates such arbitrary detention shall be liable to the penalties specified in articles 119 and 120 of the Penal Code."

Paragraph 5

28. The provisions of this paragraph of the Covenant are guaranteed by article 1382 of the Civil Code applicable in the Congo, which stipulates:

"Any act by an individual which causes injury to others shall oblige the person at fault to make reparation therefor."

Article 10

Conditions of detention

29. Article 627 and 628 of the Code of Criminal Procedure provide as follows:

Article 627

"1. Every public gaol must comprise at least two separate sections, depending on the prisoners' lifestyles.

2. Each section shall in turn be divided into quarters for men and for women in such a way that there can be no communication between them.";

Article 628

"Accused persons and defendants shall be granted every possibility of communication and every facility consistent with the requirements of prison discipline and security."

30. For each sex, the following categories of prisoners are separated from one another:

(a) First-time offenders and recidivists;

(b) Juvenile offenders and adults;

(c) Minors and adults;

(d) Minors and other juvenile offenders;

(e) Untried and convicted prisoners.

31. Articles 4 and 6 of Order No. 0192/MINT/DGIP/DT/DAP/DMACB of 23 January 1979 prescribing internal regulations for prison establishments in the Republic of the Congo provide as follows:

Article 4

"Prisoners shall have the option of having their food sent in from outside, provided that it is first tested by a guard.";

Article 6

"Prisoners are responsible for keeping their cells clean; cells must be swept each morning and swilled out at least once a week under the responsibility of yard or cell-block chiefs designated by the superintendent."

32. Articles 699 and 700 of the Code of Criminal Procedure provide as follows:

Article 699

"1. The juveniles' judge shall notify known parents, tutors or guardians of proceedings. Should the minor or his legal representative fail to select counsel for the defence, the judge shall appoint counsel or arrange for counsel to be appointed ex officio.

2. In the case of courts based at places where there is no resident lawyer, counsel for the defence shall be designated from among persons presenting all desirable guarantees.

3. The judge may request the social services or persons holding a social diploma authorized for that purpose by decision of the Minister of Justice to carry out a social investigation.

4. The juveniles' judge may temporarily entrust the minor to:

(a) His parents, tutor or guardian, a reliable person or a public or private institution for assistance to children;

(b) A reception centre;

(c) A hospital establishment;

(d) An educational, vocational training or care establishment or institution of the State or of an authorized public administration.

5. If, in the estimation of the judge, the physical or psychological condition of the minor is such as to warrant detailed observation, he may order the minor to be temporarily placed in an observation centre established or approved by the Minister of Justice.

6. Temporary custody may, where appropriate, take place under the supervised freedom regime.

7. A custody measure may be revoked at any time.";

Article 700

"1. A minor of more than 13 years of age can be temporarily placed in a public gaol by the juveniles' judge only if such a measure appears to be indispensable or if it is impossible to make any other arrangements.

2. The juveniles' judge may adopt such a measure in respect of a juvenile under 13 years of age only by virtue of a substantiated order and for the purpose of preventing crime.

3. In such a case, the minor shall, failing the existence of special premises, be held in a special section."

33. The conditions of detention in police premises on the one hand and prisons on the other are no longer appropriate to the constantly rising number of prisoners. The prisons, many of which were built during the colonial era and designed to hold only a few prisoners, are dilapidated and the sizes of the cells are not up to modern standards. Because of the country's economic problems, prisons are unable to meet minimum welfare requirements (as regards leisure, food, health, training, etc.).

34. The flare-up of political violence as a result of the electoral disputes has led to fatalities and the establishment of private detention centres outside the authorities' control and consequently to a potential for practices contrary to human dignity and to the country's laws and regulations.

Article 11

Imprisonment for non-fulfilment of a contractual obligation

35. Act No. 51/83 of 21 April 1983 embodying the Code of Civil, Commercial, Administrative and Financial Procedure provides as follows in its chapter 8, concerning default imprisonment:

Article 386

"Under private law, decisions or orders resulting from a conciliation procedure can be enforced through default imprisonment.";

Article 387

"Default imprisonment may be practised only if the principal amount of the sentence exceeds 20,000 francs and after exhaustion of other methods of enforcement.";

Article 388

"It may be practised only if non-fulfilment is due to bad faith on the part of the debtor.";

Article 389

"Debtors under 18 years of age and over 60 years of age may not be subjected to default imprisonment.";

Article 390

"Default imprisonment may only be requested within three years of the date on which the decision became enforceable.";

Article 391

"The plaintiff shall make application to the president of the court which handed down the decision to be enforced.

The said president shall pronounce in chambers, the debtor having been summoned in the regulation manner.";

Article 392

"The ordinance authorizing default imprisonment must stipulate:

1. That the decision is enforceable;

2. The amount of the sentence;

3. That other methods of enforcement have not succeeded;

4. The age of the debtor;

5. The duration of the imprisonment.

It must contain a precise indication of the circumstances demonstrating the debtor's bad faith.";

Article 393

"When the order becomes final, the debtor shall be imprisoned in a special section of the public gaol. He shall be required to work."

Article 12

Freedom of movement

Paragraph 1

36. The Constitution of 15 March 1992 guarantees citizens liberty of movement. Article 22 provides that:

> "All citizens shall have freedom of movement on the national territory.
>
> Road blocks may only be established on conditions defined by law.
>
> All citizens shall have freedom of residence. They shall have the right freely to leave the national territory unless they are the subject of judicial proceedings, and to return thereto."

37. The provisions of the Covenant are guaranteed by Act No. 073-84 of 17 October 1984, embodying the Family Code. Title I of this Act, which concerns personality and the rights of the person, provides as follows:

> *Article 6*
>
> "Any unlawful act against the human person justifies the individual against whom it is directed in applying for an injunction against it. This shall be without prejudice to the liability which may ensue for the principal.";
>
> *Article 7*
>
> "Every adult has the right to establish his residence where appropriate and to change his place of residence."

However, in the case of village communities, the chief may determine the choice of the new residence only with the consent of the majority of its inhabitants.

Paragraphs 2, 3 and 4

38. The rights enshrined in article 12, paragraphs 2, 3 and 4, of the Covenant are guaranteed by article 22 of the Constitution, for the text whereof see paragraph 36 above. Since the conclusion of the Sovereign National Conference (June 1991), all citizens have had the right to leave the national territory freely and to return to it.

39. Article 52 of the Constitution confers the same freedoms upon aliens:

> "Aliens shall have on the territory of the Republic of the Congo, and subject to current law and regulations, the same rights and freedoms as Congolese citizens, except those enumerated in articles 5, 6, 7 and 25 of the present Constitution. Notwithstanding, they shall have the right to form and belong to apolitical associations."

It should be noted that exit from the national territory was formerly subject to the obtaining of an exit permit from the Ministry of the Interior.

Article 13

Expulsion of aliens

40. Apart from expulsions decided on by the political authorities in the light of various considerations related to national sovereignty, aliens residing in the Congo may only be expelled pursuant to a duly rendered judicial decision consequent upon the commission of an offence.

41. Ordinance No. 25/70 of 1 August 1970, establishing the requirements for residence in the Republic of the Congo by persons of foreign nationality who have been convicted of an offence, regulates this question. Article 1 of the Ordinance reads:

> "If the alien is sentenced to a custodial penalty, the criminal court, the court of appeal and the correctional courts shall, at the request of the Public Prosecutor's Office, be required to accompany the primary penalty by the accessory penalty of expulsion from the national territory.
>
> When the primary custodial penalty is in the form of a suspended sentence, the same courts may, at the request of the Public Prosecutor's Office, accompany it by the accessory penalty of expulsion from the national territory."

It should be emphasized that the person under sentence may avail himself of all the rights of judicial remedy, objection, appeal, application to vacate a judgement and so on.

Article 14

Paragraph 1

42. The rights enshrined in article 14 of the Covenant are covered in articles 11, 18 and 19 of the Congolese Constitution:

Article 11

> "The State shall safeguard the equality before the law of all citizens, without distinction as to origin, social or material status, racial, ethnic or regional origin, sex, education, language, attitude vis-à-vis religion or philosophy, or place of residence. It shall respect all rights and freedoms within limits compatible with public order and morals.
>
> It shall be incumbent on the State to ensure the elimination of all forms of discrimination against women and the protection of their rights in all spheres of private and public life mentioned in the international declarations and conventions ratified by the Congo.

Any act that confers privileges upon, or limits the rights of nationals on the grounds referred to in paragraph 1 of this article shall incur the penalties provided for by law.";

Article 18

"All citizens shall have the right to petition the competent State organs.";

Article 19

"Any citizen who is injured by an official act shall have the right to judicial recourse."

43. Congolese legislation contains provisions concerning proceedings in open court, such as articles 24 and 25 of the Code of Civil, Commercial, Administrative and Financial Procedure and articles 258 to 335 of the Code of Criminal Procedure. Of these, article 24 provides that "save in conciliation proceedings or if the law provides otherwise, hearings shall be public". If, however, the proceedings prove to be prejudicial to public order or morality, the presiding judge may order the case to be heard in camera. These judgements are always rendered in public hearings, and article 25 goes on to state that "proceedings shall be organized along the lines of the adversary system. Each party shall be informed of the statements, writs, pleas or documents of its opponent and called upon to respond to them."

Paragraph 2

44. The presumption of innocence is a general principle of criminal law and is therefore an imperative for the judge.

Paragraph 3 (a)

45. Congolese legislation also contains provisions to defend the right of everyone to be informed, in a language which he understands, of the charge against him. Articles 341 and 342 of the Code of Criminal Procedure state:

Article 341

"1. In the event that the defendant does not speak French adequately or if it is necessary to translate a document placed in evidence, the presiding judge shall appoint an interpreter who is not less than 21 years old and shall have him take an oath to discharge his task faithfully.

2. The Public Prosecutor's Office, the defendant and a third party bringing a civil action may challenge the interpreter, giving the grounds for their objection. The court shall pronounce on this objection and its decision shall not be subject to appeal of any kind.

3. The interpreter may not, even with the consent of the defendant or the Public Prosecutor's Office, be selected from among the judges making up the court, the clerk at the hearing, the parties or the witnesses.";

Article 342

"1. If the accused is a deaf mute and is unable to write, the presiding judge shall appoint, as an interpreter, the person who is most accustomed to converse with him.

2. In the event that the defendant referred to in the present article is able to write, the clerk shall write out the questions or comments addressed to him and shall transmit them to the defendant, who shall make written replies. The whole shall be read out by the clerk."

Paragraph 3 (b) and (d)

46. Articles 97 to 102 of Act No. 1/63 of 13 January 1963 embodying the Code of Criminal Procedure contain provisions relating to the appointment of counsel for an accused person under detention:

Article 97

"2. If the charge is maintained, the judge shall notify the defendant of his right to select counsel from among the defence lawyers attached to the court of appeal or the lawyers allowed to assist the parties in accordance with the conditions and forms provided in international conventions.";

Article 98

"An accused person under detention may communicate freely with his counsel immediately after his first appearance in court."

47. However, in the case of a flagrant offence, article 55 (5) of the Code of Criminal Procedure provides that:

"If the accused has not chosen a counsel, legal assistance shall be assigned to him by order of the presiding judge of the criminal court."

In Section 2 ("Concerning the appearance of the defendant") of Book II ("Trial courts"), the Code of Criminal Procedure stipulates:

Article 268

"1. At the hearing, the presence of counsel for the accused shall be obligatory.

2. If the counsel chosen or designated does not appear, the presiding judge shall appoint one ex officio."

Paragraph 3 (e)

48. Article 263 (2) of the Code of Criminal Procedure stipulates:

> "The defendant or his counsel may examine, through the presiding judge, the co-defendants and witnesses.
>
> A third party bringing a civil action or counsel may, under the same conditions, examine the defendant and the witnesses."

It should be stressed that this procedure is applicable in courts of all levels and the witnesses in question may be witnesses for the prosecution or for the defence.

Paragraph 3 (f)

49. Articles 295 (1), and 296 (1) and (2) of the Code of Criminal Procedure provide as follows:

> *Article 295*
>
> "1. In the event that the defendant does not speak French adequately or if it is necessary to translate a document placed in evidence, the presiding judge shall appoint an interpreter who is not less than 21 years old and shall have him take an oath to discharge his task faithfully.";
>
> *Article 296*
>
> "1. If the accused is a deaf mute and is unable to write, the presiding judge shall appoint, as an interpreter, the person who is most accustomed to converse with him.
>
> 2. The same procedure shall apply in the case of a witness who is a deaf mute."

Paragraph 4

50. Act No. 1/63 of 13 January 1963 embodying the Code of Criminal Procedure prescribes provisions concerning juvenile delinquence in Title IX, especially article 685:

> *Article 685*
>
> "Juveniles under 18 years of age charged with an infraction classified as a crime or offence shall not be brought before criminal courts of general jurisdiction and shall be tried only by juveniles' courts or by the criminal court for juveniles."

51. Juveniles' courts have jurisdiction to try infractions classified as crimes or offences ascribed to juvenile persons under 18 years of age. They have jurisdiction to deal with cases in which the health or morals of juveniles are endangered (art. 175 of Act No. 53/83 of 21 April 1983 reorganizing the system of justice in the People's Republic of the Congo). The juveniles' judge, the correctional division for juveniles and the

juveniles' section of the criminal division decide, in the light of each case, on the measures of protection, assistance and education that appear to be appropriate (art. 686 (1) of the Code of Criminal Procedure).

52. However, when the circumstances and personality of the offender seem to them to require it, they may pass a criminal sentence on an offender over 13 years of age in accordance with the provisions of articles 399 to 408. Article 687 (1) of the Code of Criminal Procedure states that juveniles' courts may decide, in the case of juveniles over 16 years of age, that it is inappropriate to treat lack of full age as a mitigating circumstance. However, "this decision may only be taken by an expressly substantiated measure" (art. 687 (2) of the Code of Criminal Procedure).

Paragraph 5

53. Congolese law contains instruments providing for the right to appeal against any decision handed down by Congolese courts on any question. Thus, Act No. 53/83 of 21 April 1983 reorganizing the system of justice in the People's Republic of the Congo prescribes in article 126 that regional or communal people's courts shall hear in last instance appeals on judgements handed down in first instance by district, area, neighbourhood and village-centre people's courts, labour courts, juveniles' courts and, in general, verdicts handed down in first instance only by any court within their jurisdiction for which no special appellate court is designated by law.

54. Judgements handed down in correctional questions may be contested by appeal (art. 431 of the Code of Criminal Procedure) to the Correctional Appeal Division. The exercise of the right of appeal in correctional matters is regulated by articles 431 to 445 of the Code of Criminal Procedure:

Article 431

"Judgements handed down in correctional matters may be contested by means of an appeal.";

Article 432

"Notwithstanding, an appeal against preliminary or interlocutory judgements which deals with incidental matters and exceptions shall not be admitted, even against judgements regarding jurisdiction, until after judgement is pronounced on the merits of the case and simultaneously with the appeal against that judgement.

The clerk of the court shall, in all instances in which the law lays down that the appeal shall not be admitted, prepare a memorandum on his refusal to register the statement of appeal.

The parties shall be entitled to petition the president of the court against the clerk's refusal within 24 hours thereof. The clerk shall be obliged to admit the appeal if ordered to do so by the court president.

A party who expresses his intention to appeal against a judgement within the legal period shall, in all cases, conserve the right to renew his appeal after the decision is handed down on the merits of the case.";

Article 433

"The appeal shall be submitted to the court of appeal.";

Article 434

"The following are entitled to appeal:

1. The accused;

2. The person incurring civil liability;

3. In respect only of his civil interests, a claimant for criminal indemnification;

4. The public prosecutor;

5. In cases where they exercise the public right of action, Government departments;

6. The government attorney attached to the Court of Appeal."

55. Judgements pronounced on appeal may be the subject of an application to vacate as provided for in articles 512, 513 et seq. of the Code of Criminal Procedure:

Article 512

"Decisions of the indictment division and decisions and judgements handed down in last resort in criminal, correctional and police matters may, in the event they infringe the law, be annulled in pursuance of an application to vacate lodged by the Public Prosecutor's Office or by the injured party, in accordance with the instructions to be established.";

Article 513

"The Public Prosecutor's Office and all the parties have three clear days from the day on which a contested decision is handed down to submit an application to vacate."

Paragraph 6

56. The subject of the above paragraph is governed in the Republic of the Congo by article 564 of the Code of Criminal Procedure, which provides as follows:

> "1. The decision establishing the innocence of a convicted person may, at his request, award him damages for injury caused by the conviction.
>
> 2. If the victim of a miscarriage of justice has died, the right to apply for damages devolves in the same conditions to the person's spouse, parents and children.
>
> 3. The damages awarded shall be paid by the State, subject to recourse by it against the claimant for criminal indemnification, the informer or the false witness who was to blame for the conviction. They are paid as criminal law costs."

Paragraph 7

57. Article 309 of the Code of Criminal Procedure provides that:

> "No one legally acquitted can be rearrested or recharged on the same grounds, even under a different category."

Article 15

58. The provisions of article 15 of the Covenant are not expressly set out in the Congolese Penal Code. Nevertheless, there is a principle of Congolese criminal law whereby:

> "(a) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed.
>
> (b) No one shall be sentenced to a heavier penalty than that applicable at the time when the criminal offence was committed on account of any act or omission which constituted a criminal offence at the time.
>
> (c) Less severe criminal laws always have a retroactive effect."

This principle is binding on the judge. Moreover, article 4 of the Congolese Penal Code states that:

> "No infraction, offence or crime shall be subject to penalties which were not provided for by law before it was committed."

Articles 16 and 17

Right to privacy

59. In Title II ("Fundamental rights and freedoms"), the Congolese Constitution guarantees all individuals, whatever their race, place of origin, political opinions, colour, creed, sex, property or social status, the following rights:

The right to life (art. 10);

The right to freedom (arts. 12, 22, 26 and 27);

The right to inviolability of the home (art. 24);

Freedom of expression (art. 27);

Freedom of conscience and religion (art. 26);

Freedom of the press and freedom of association (art. 25);

The right to elect and to be elected (arts. 5 and 6);

The right to the inviolability of the secrecy of letters and of all other forms of correspondence (art. 28).

Article 18

Freedom of conscience

60. Article 26 of the Constitution of 15 March 1992 provides that:

"Freedom of belief and conscience and the freedom to profess religious or philosophical beliefs shall be inviolable.

Freedom of worship shall be guaranteed within the limits compatible with public order and morals.

No one shall be relieved on grounds of religious opinion from fulfilling a civic duty."

With the existence of multi-party democracy, the restrictions on freedom of belief and worship have been abolished. This has led to the establishment of a number of faiths and sects in various parts of the country.

Article 19

Freedom of expression

61. Article 27 of the Constitution provides that:

"Every citizen shall have the right freely to express and disseminate his opinion by speech, writing or image.

Freedom of the press and freedom of information shall be guaranteed.

Censorship shall be prohibited.

Access to sources of information shall be unimpeded.

All citizens shall have the right to information and communication. Subject to compliance with the law, the exercise of activities relating to these domains shall be free from all outside control."

Article 20

Paragraph 1

62. Article 79, paragraph 1, of the Penal Code reads:

"An attack on the external security of the State carries the penalties referred to in article 8 of the new Constitution and shall be considered to have been committed by any Congolese or alien:

1. Who by hostile act not approved by the Government exposes the country to a declaration of war."

Paragraph 2

63. The provisions of article 20, paragraph 2, of the Covenant are enshrined in article 8 of the Congolese Constitution:

"Political associations, parties or groups whose objectives import the infringement or overthrow of the democratic constitutional order or compromising of the existence of the Republic of the Congo shall be unconstitutional. They shall incur the sanctions provided for by the law.

All propaganda or acts aimed at compromising the internal security of the State, national unity or territorial integrity shall be unconstitutional and punishable under the current laws and regulations."

64. Article 91, paragraph 1, of the Penal Code provides that:

"Any attack designed to incite civil war by arming citizens or inhabitants or inducing them to arm against each other or to cause devastation, massacre or pillaging in one or more communes shall be punishable by death."

Articles 21 and 22

Freedom of assembly and association

65. These freedoms are recognized in articles 25 and 29 of the Constitution, which provide as follows:

Article 25

"All citizens shall have the right to create and belong to parties, trade unions and associations.";

Article 29

"All citizens shall have the right to assemble peacefully without previous authorization or declaration.

Peaceful assemblies and demonstrations in public places shall be subject to regulation.

Freedom to process shall be guaranteed. The conditions of exercise of this freedom shall be defined by law."

Article 23

66. In the Congo, the rights of the family proclaimed in article 23 of the Covenant are guaranteed by articles 38-45 and 58 of the Constitution:

Article 38

"It shall be obligatory for the State to assist the family in its mission as guardian of the morals and traditional values recognized by the community.

It shall be incumbent on the State to assure the protection of the rights of the mother and child as stipulated in international declarations and conventions.";

Article 39

"Marriage and the family shall be under the protection of the State. The law shall establish the legal conditions relating to marriage and the family.

Marriages shall not be legal unless contracted before the State organs. Marriage may not be entered into without the free and full consent of the intending spouses.";

Article 40

"Parents shall have obligations and rights vis-à-vis their children. Children shall have rights and duties vis-à-vis their parents.

Children shall have the same rights, whether born in or outside wedlock.";

Article 41

"Children may not be separated from their families against the will of the persons responsible for their education except in compliance with the law.

The mother and the child shall have the right to aid and assistance from the State.";

Article 42

"Every child shall have, without any discrimination as to race, colour, sex, language, religion, national, ethnic or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society, and the State.

Every child shall be declared to the registry authorities after his birth within a time limit fixed by law and shall have a name.

Every child shall have the right to acquire a nationality.";

Article 43

"The State shall protect all children and adolescents from economic and social exploitation.

Employment of children under 16 years of age shall be prohibited.";

Article 44

"The employment of persons under 18 years of age in work of such a nature as to endanger their morals, health or lives or to hinder their normal development shall be punishable by law.";

Article 45

"Neglect by parents of their duties regarding the education and protection of their children shall be punishable by law.";

Article 58

"It shall be the duty of every individual:

To preserve the harmonious development of the family and promote the cohesion of, and esteem for this institution, to respect his parents at all times, to nourish them and to assist them in the event of need;

Constantly to preserve social and national solidarity and to reinforce it, particularly when it is at risk."

Article 24

Paragraph 1

67. Act No. 073/84 of 17 October 1984 containing the Family Code guarantees every child the protection required by his status as a minor. The objectives of article 24, paragraph 1, of the Covenant are also taken into account in article 42 of the Constitution, the first paragraph whereof provides that:

"Every child shall have, without any discrimination as to race, colour, sex, language, religion, national, ethnic or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society, and the State."

Paragraph 2

68. The second paragraph of article 42 of the Constitution provides as follows:

"Every child shall be declared to the registry authorities after his birth within a time limit fixed by law and shall have a name."

Similarly, article 47 (1) of Act No. 073 of 17 October 1984 containing the Family Code requires that maternity homes and public or private medical units shall keep a special register for the immediate registration of births in order of their occurrence.

69. Article 40 of the Constitution states that:

"Parents shall have obligations and rights vis-à-vis their children. Children shall have rights and duties vis-à-vis their parents.

Children shall have the same rights, whether born in or outside wedlock."

Paragraph 3

70. The third paragraph of article 42 of the Constitution guarantees every child the right to a nationality:

"Every child shall have the right to acquire a nationality."

71. Provisions to the same effect are to be found in articles 7-10 of Act No. 35-61 of 20 June 1961 containing the Congolese Nationality Code:

Article 7

"Any child born to a Congolese father and mother shall be Congolese.";

Article 8

"Any child born in the Congo shall be Congolese if born:

1. Either to a Congolese father and a mother born in the Congo;

2. Or to a father born in the Congo and a Congolese mother;

3. Or to a father and mother themselves born in the Congo.";

Article 9

"Any child shall be Congolese, subject to the right to renounce that nationality under the conditions laid down in articles 14 and 15 in the event that his filiation to an alien is established:

1. If born to a Congolese father or mother;

2. If born in the Congo to parents one of whom was also born in the Congo;

3. If born in the Congo to parents unknown.

In the latter case, however, he shall be considered as never having been Congolese if during his minority his filiation to two aliens is established and if, under the domestic law of one of them, he possess foreign nationality.";

Article 10

"Any newborn child found in the Congo shall be presumed to have been born in the Congo, failing proof to the contrary."

Article 25

Conduct of public affairs

72. Article 6 of the Constitution on 15 March 1992 guarantees the right of every citizen to take part in the conduct of public affairs:

Article 6

"All citizens shall have the right to participate, either directly or through representatives, in the government of the country."

Article 26

73. The rights enshrined in article 26 of the Covenant are guaranteed by article 11 of the Congolese Constitution, which provides:

> "The State shall safeguard the equality before the law of all citizens, without distinction as to origin, social or material status, racial, ethnic or regional origin, sex, education, language, attitude vis-à-vis religion or philosophy, or place of residence. It shall respect all rights and freedoms within limits compatible with public order and morals.
>
> It shall be incumbent on the State to ensure the elimination of all forms of discrimination against women and the protection of their rights in all domains of private and public life mentioned in the international declarations and conventions ratified by the Congo.
>
> Any act that confers privileges upon, or limits the rights of nationals on the grounds referred to in paragraph 1 of this article shall incur the penalties provided for by law."

Article 27

74. The Constitution of 15 March 1992 guarantees the rights proclaimed in the Covenant in its articles 11 (see para. 73 above), 57 and 64:

Article 57

> "It shall be incumbent on every individual to respect and esteem other human beings without any discrimination, and to maintain with them relations conducive to the promotion, safeguarding and reinforcement of respect and reciprocal tolerance.";

Article 64

> "It shall be incumbent on every individual:
>
> To strive, in his relations with society, for the preservation and strengthening of cultural values in a spirit of tolerance, dialogue and cooperation and generally to contribute to the promotion of the moral health of society, to preserve national unity and cohesion and to strengthen them when they are at risk;
>
> To contribute to the best of his abilities, at all times and at all levels, to the promotion and realization of African unity."

Conclusion

75. The implementation of the International Covenant on Civil and Political Rights in the Conference has not been without difficulty, the country having been going through the first stage of democratization. After a long period of single-party rule, the wind of change reached the Congo in 1990-1991, altering the country's institutional structure.

76. Serious political problems emerged immediately after the period of transition and even before the definitive establishment of the full range of institutions provided for in the Constitution of 15 March 1992. The President of the Republic, chosen as Head of State by universal suffrage with over 61 per cent of the vote, found himself confronted with the rejection of the results of the election, with a consequent risk of institutional collapse.

77. As of this writing, only the Government and the Parliament have been set up. Other national institutions have still to be established, although the enabling legislation has already been passed; they include:

The High Court of Justice;

The Supreme Court;

The Supreme Council of Justice;

The Constitutional Council;

The Economic and Social Council;

The Supreme Council for Information and Communication.

78. The National Forum for Culture and Peace, held at Brazzaville from 19 to 24 December 1994, identified the true causes of the social and political disturbances which so endangered national unity and the Republic's institutions. This resulted in a gradual decline of the intolerance, violence and insecurity of the previous two years.

79. It is the common concern of the Government and the entire nation to build on this trend towards peace. The foci of that concern are:

The promotion and observance of human rights;

The cultivation of democracy and peace;

A constant striving to identify the causes of conflict;

The defence of fundamental freedoms.

The ongoing peace process needs further strengthening from improvements in living conditions leading to genuine shared development and lasting peace in the Congo and other countries in the central African subregion; international solidarity is of crucial importance in that respect.